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Third Evaluation Round

Second Compliance Report on Malta

"Incriminations (ETS 173 and 191, GPC 2)"

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"Transparency of Party Funding"

Adopted by GRECO
at its 62nd Plenary Meeting
(Strasbourg, 2-6 December 2013)

I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken by the authorities of Malta since the adoption of the Compliance Report, in respect of the nine recommendations issued by GRECO in its Third Round Evaluation Report on Malta (see paragraph 2). It is recalled that the Third Evaluation Round covers two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption); and
 - **Theme II – Transparency of political funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 44th Plenary Meeting (8 October 2009) and made public on 10 November 2009, following authorisation by Malta (Greco Eval III Rep (2009) 2E, Theme I and Theme II). The subsequent Compliance Report (Greco RC-III (2011) 11E) was adopted at GRECO's 52nd Plenary Meeting (17-21 October 2011) and made public on 2 January 2012, following authorisation by Malta.
3. As required by GRECO's Rules of Procedure, the authorities of Malta submitted their Second Situation Report with additional information regarding actions taken to implement the nine recommendations that, according to the Compliance Report, had been partly implemented. The Situation Report was received on 19 June 2013 and complemented by further information received on 6 and 19 November 2013. Both served as a basis for the Second Compliance Report.
4. GRECO selected Cyprus and the Slovak Republic to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Philippos KOMODROMOS, Counsel at the Office of the Attorney General of the Republic (Cyprus) and Ms Barbora BOWERS, International Public Law Division, International Relations Department, Ministry of Justice (Slovak Republic). They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed three recommendations to Malta in respect of Theme I. All of them were considered partly implemented in the Compliance Report.

Recommendation i.

6. *GRECO recommended to amend the Criminal Code to include the offences of bribery of domestic and foreign arbitrators as well as foreign jurors and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*

7. It is recalled that the recommendation had been deemed partly implemented in the Compliance Report since draft amendments criminalising bribery of domestic and foreign arbitrators as well as foreign jurors had yet to be adopted by Parliament.
8. The authorities of Malta now confirm that the amendments were adopted on 20 April 2012 by virtue of the Various Laws (Criminal Matters) (Amendment) Act, 2010, dated 22 June 2010, and now form an integral part of Article 121 paragraphs (2) and (4) of the Criminal Code.
9. GRECO commends the authorities for following through with the reform which ensures the criminalisation of corruption offences committed by domestic and foreign arbitrators and foreign jurors as required by the Criminal Law Convention on Corruption and its Additional Protocol. It regrets, however, that the ratification of the latter legal instrument has not as yet been achieved. For this reason, GRECO cannot conclude that all elements of the recommendation have been duly complied with. It therefore encourages the authorities to complete this process as soon as possible.
10. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

11. *GRECO recommended to increase the maximum penalty provided for trading in influence (Article 121 A of the Criminal Code) in order to render it effective, proportionate and dissuasive as required by Article 19.1 of the Criminal Law Convention on Corruption (ETS 173).*
12. It is recalled that the authorities had originally foreseen to increase the penalty for trading in influence from imprisonment of up to eighteen months to imprisonment of up to three years. In the Compliance Report, GRECO had welcomed those plans as a step in the right direction but insisted that they were not fully in line with other comparable offences under the Maltese law where a maximum of eight years imprisonment could be applicable. Therefore, and bearing in mind that the planned amendments had at the time not yet been adopted by Parliament, it was considered that the recommendation had been partly implemented.
13. The authorities of Malta report that, by virtue of changes to sub-article (1) of Article 121 A of the Criminal Code, penal sanctions for the offence of trading in influence have been increased to imprisonment of up to six years. Relevant legislative amendments were adopted by Parliament¹ and entered into force upon publication on 14 June 2013.
14. GRECO is pleased that due consideration has been given to its assessment. It welcomes the efforts deployed by the authorities to render the penalties for the offence of trading in influence effective, proportionate and dissuasive and comparable to other offences under Maltese law (such as bribery in the public and private sectors).
15. GRECO concludes that the recommendation ii has been implemented satisfactorily.

¹ By virtue of Bill 4 for the adoption of an Act entitled the Criminal Code (Amendment) Act, 2013.

Recommendation iii.

16. *GRECO recommended to revise Article 117 of the Criminal Code² in order to provide for effective, proportionate and dissuasive penal sanctions for all bribery offences of judges, in accordance with Article 19.1 of the Criminal Law Convention on Corruption (ETS 173).*
17. GRECO recalls that, in the Compliance Report, the authorities had reported on their intentions to amend the Criminal Code to increase the penal sanctions for all bribery offences committed by judges as follows: under Article 117 (a) – to imprisonment from three up to nine years (as opposed to imprisonment from 18 months up to five years); under Article 117 (b) – to imprisonment from 18 months up to five years (as opposed to imprisonment from nine months up to three years); and under Article 117 (c) – to imprisonment from nine months up to two years (as opposed to imprisonment from four up to twelve months). The authorities had moreover referred to a draft amendment to be introduced to Article 120 of the Criminal Code in the form of a “*proviso*” eliminating a contradictory effect in the law that lead to more severe sanctions for attempted bribery offence than for completed offences. Since the draft amendments still required approval by Parliament, GRECO had concluded that the recommendation had been partly implemented.
18. The authorities of Malta indicate that the aforementioned amendments were adopted by Parliament and entered into force on 14 June 2013.³
19. GRECO takes the view that Article 117 of the Criminal Code, as amended, conforms to the requirements of effective, proportionate and dissuasive sanctions stipulated by the Criminal Law Convention on Corruption. It furthermore complements the authorities for having introduced a *proviso* under Article 120 of the Criminal Code by virtue of which unsuccessful bribery can no longer carry a heavier sentence than successful bribery. GRECO therefore concludes that the recommendation has been implemented satisfactorily. Nonetheless, GRECO reiterates its earlier position (see paragraph 93 of the Evaluation Report) with regard to Articles 116 and 117 of the Criminal Code – which can be considered as a relic from the past – that further thought could be given to whether they are necessary in light of the elements of other forms of public sector bribery provided for under the Criminal Code.
20. GRECO concludes that the recommendation iii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

21. It is recalled that GRECO in its Evaluation Report addressed six recommendations to Malta in respect of Theme II. All of them were found partly implemented in the Compliance Report.
22. In March 2013, a new Government came to power for the first time in twenty five years. Increasing transparency of political funding is one of its key priorities as was publicly acknowledged by the Prime Minister. In respect of all recommendations under Theme II, the authorities refer to the draft “Political Parties Act” Bill 2013, which is now being discussed in Parliament and has replaced Bill 2011 which was assessed in the Compliance Report.

² Article 117 of the Criminal Code deals with specific situations where officials (typically judges) in return for a bribe release or discharge an offender.

³ By virtue of Bill 4 for the adoption of an Act entitled the Criminal Code (Amendment) Act, 2013.

Recommendation i.

23. GRECO recommended (i) to introduce a general requirement for both political parties and election candidates to disclose all individual donations (including of a non-monetary nature) they receive above a certain value together with the identity of the donor and to revise spending limits in respect of election candidates; and (ii) to introduce a general ban on donations from donors whose identity is not known to the party or candidate.
24. It is recalled that the recommendation had been assessed as partly implemented. While the draft Bill 2011 had met some of the demands of the recommendation, it did not contain all the elements requested. For example, in respect of part (i) of the recommendation, GRECO had noted the inclusion of a requirement to identify donations to a political party above 3 000 EUR from *non-members* and to disclose donors whose contributions exceeded 10 000 EUR. In respect of changes to the spending limits of election candidates, no new information had been reported. Concerning part (ii) of the recommendation, GRECO had observed that anonymous donations had still not been prohibited and thresholds for such donations continued to be critically high in comparison with other European countries (2 000 EUR from unidentified sources and 10 000 EUR from anonymous donors per year).
25. The authorities of Malta now report that, by virtue of Article 35 of the new Bill 2013, the distinction previously made between donations by members and non-members of a political party will be eliminated in that, donations from party members will have to be disclosed in the same manner as those originating from non-party members. Furthermore, Article 36⁴ foresees a list of non-permissible donors/donations, including *inter alia* anonymous donations as well as those from unidentified sources where the amount exceeds 300 EUR from the same source.
26. In so far as part (i) of the recommendation is concerned, GRECO notes that, the new Bill 2013 foresees that all donations made to political parties in excess of 300 EUR, whether from a member or non-member of a political party, will need to be properly *recorded* in the books (Article 39(1)). However, only donations above 7 000 EUR will need to be *reported* by the party's treasurer to the Electoral Commission and subsequently *disclosed* to the public. (Article 40 (3)). The disclosure threshold therefore remains very high and GRECO is of the opinion that it has to be decreased to an appropriate level. As concerns election campaigns, weekly reports submitted by the party's treasurer to the Commission will be required to contain information on each donation in excess of 300 EUR, including the donor's name. GRECO finds such a threshold appropriate and in line with Recommendation Rec(2003)4. As concerns the revision of spending limits in respect of election candidates, they will be increased from 1 400 EUR to 10 000 EUR by virtue of amendments to Article 46 of the General Elections Act.. Notwithstanding several important improvements, it is concluded that this part of the recommendation has been partly implemented due to the fact that the disclosure threshold remains very high.
27. Turning to part (ii) of the recommendation, GRECO observes that contributions from donors whose identity is not known to a political party have not been prohibited, nevertheless thresholds envisaged in the draft Bill 2011 (i.e. 10 000 EUR per annum for anonymous donations and 2 000 EUR per annum for donations from unidentified sources) have been reduced to 300 EUR in the

⁴ Article 36 enumerates as non-permissible donations: a) those which are evidently made in the expectation of, or in return for, some specific financial or political advantage; b) donations from any public corporation or any para-state body, company or entity in which the State has a controlling interest; c) donations from foreign sources; d) anonymous donations above 300 EUR from the same source or given by reason of deception or concealment; and e) donations above 50 000 EUR during one calendar year from the same source.

new Bill 2013. While welcoming the substantial reduction in the value of anonymous donations, GRECO recalls that Article 12 of Recommendation Rec(2003)4 requires donations to political parties to be registered. Therefore, in its previous pronouncements, GRECO had stressed that the problem of anonymity lies with the absence of registration, which creates risks when accepting donations involving potentially much larger amounts. Considering that this issue still requires determined steps by the authorities, GRECO concludes that this part of the recommendation has not been implemented.

28. GRECO concludes that the recommendation i remains partly implemented.

Recommendation ii.

29. *GRECO recommended (i) to introduce rules for political parties to keep proper books and accounts (including in connection with election campaigns); (ii) to ensure that income and expenditure, assets and debts are accounted for in a comprehensive and coherent manner and reported on at appropriate intervals; and (iii) to seek ways to consolidate the accounts to include entities which are related directly or indirectly to a political party or otherwise under its control.*
30. It is recalled that, in the Compliance Report, GRECO had taken note of Articles 25 and 26 of the draft Bill 2011, by virtue of which the treasurer of a political party would be bound to keep accounting records disclosing the financial position of the party at any time (including income, expenditure, assets and liabilities as well as election campaign expenses) and to prepare annual statements of the accounts at appropriate intervals. The draft had further prescribed that the records of entities related directly or indirectly to a political party or otherwise under its control were to become an integral part of the party's accounts. GRECO had concluded that, since the draft Bill 2011 was yet to be adopted by Parliament, the recommendation had only been partly implemented.
31. The authorities of Malta indicate that the aforementioned provisions of the draft Bill 2011 have been replicated in full in Articles 25-27 of the new Bill 2013.
32. GRECO reiterates the remarks it made in the Compliance Report, namely that the new bill, when it is adopted, would provide a sufficiently comprehensive framework for the political parties to keep full and transparent books and accounts. At this stage, the recommendation cannot be considered fully implemented given that the new Bill is yet to be adopted by Parliament.
33. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

34. *GRECO recommended to develop a co-ordinated approach for the publication of political financing accounts and/or reports (including party and election campaign financing) in order to facilitate the public's access to such documents.*
35. It is recalled that, in the Compliance Report, GRECO had taken note of Article 29 of the draft Bill 2011, by virtue of which within four months from the end of a financial year the treasurer of a political party would be required to submit an annual statement of accounts to the Electoral Commission, which, according to Article 32, would in turn be obliged, within one month, to make the statement public. It had been observed that, even if the draft bill responded to some extent to the recommendation, it was necessary to further clarify (in law or in regulations) the level of detail

needed in the annual statements as well as the format in which they were to be presented to the public. GRECO had moreover estimated that the time limit for publication was unnecessarily long and publication rules pertaining specifically to election campaigns were yet to be established. It had therefore been concluded that the recommendation had only been partly implemented.

36. The authorities of Malta explain that Articles 30 and 31 of the new Bill 2013 have replicated the aforementioned provisions. Moreover, new Article 26 describes the required content of a statement of accounts of a political party for each financial year. As concerns the time limit for publication, thought is being given to the feasibility of reducing the term by one month (i.e. between the submission of statements of accounts to the Electoral Commission and their publication).
37. GRECO takes note of the information provided. Concerning the level of detail of an annual statement of accounts, it notes that, although Article 25 of the new Bill 2013 imposes the duty on political parties to keep accounting records covering income, expenditure, assets and debts, Article 26 (1) only requires the inclusion in the annual statement of accounts presented to the Electoral Commission of information on income and expenditure, the financial position as at the financial year end and cash flows.. For this reason, the proposed legal framework only partly meets the requirements of the recommendation and needs to be elaborated further. Moreover, there is still no mention of how the annual statements are to be presented to the public. In this regard, GRECO wishes to underscore yet again the importance of uniformity in the presentation of annual statements in order to allow comparability over time and between different political parties. It encourages the authorities to deploy further efforts in order to fully comply with the recommendation, including by revising the time limits for publication of the statement of accounts.
38. GRECO concludes that the recommendation remains partly implemented.

Recommendation iv.

39. *GRECO recommended to ensure independent auditing, as appropriate, in respect of political parties obliged (or yet-to-be obliged) to keep books and accounts.*
40. It is recalled that, in the Compliance Report, GRECO had acknowledged that Article 27 of the draft Bill 2011 contained elements addressing the concerns raised in the recommendation. In particular, it stipulated that “the accounts of a political party shall each year be audited by an accountant as defined by Article 2 of the Accounting Professions Act”. Since the draft bill had not been adopted by Parliament, the recommendation had been considered partly implemented.
41. The authorities of Malta report that Article 28 of the new Bill 2013 has maintained the aforementioned requirement.
42. GRECO reiterates the position it expressed in the Compliance Report and considers that the content of Article 28 of the new Bill 2013 would meet the demands of recommendation iv. It therefore urges the authorities to proceed as soon as possible with the adoption of the draft Bill 2013.
43. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

44. *GRECO recommended to effectively ensure independent monitoring of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4.*
45. It is recalled that, in the Compliance Report, GRECO had welcomed Article 29 of the draft Bill 2011 as laying grounds for the establishment of “some kind of monitoring of party financing for the first time in Malta.” While in the past the Commission had exercised “some supervision” over the expenses of election candidates, it would be given additional powers to monitor the accounts of political parties and the accompanying audit reports. While the independence of the Electoral Commission – as the responsible monitoring body – had not been disputed by GRECO, it had considered that the draft bill did not circumscribe the Commission’s mandate with a sufficient degree of precision and that additional clarifications through law or regulations were necessary in order to clearly define its powers. Also, given that the legislation had still the status of a draft, it had been considered premature to make any assessments on the effectiveness of the future monitoring system. The recommendation had therefore been considered as partly implemented.
46. The authorities of Malta indicate that the aforementioned provisions have become part of Article 30 of the new Bill 2013. As concerns the encouragements included in the Compliance Report to further refine the monitoring system, they have been brought to the attention of the relevant domestic authorities and are being discussed.
47. GRECO is pleased that several provisions of the new Bill 2013 (e.g. Article 24(1), 29(2), 30) refer to the specific supervisory competences of the Electoral Commission. GRECO nevertheless reiterates its earlier position that the mandate and powers of the Electoral Commission in respect of monitoring of the funding of political parties and election campaigns need to be more clearly defined and the Commission’s effectiveness ensured.
48. GRECO concludes that the recommendation v remains partly implemented.

Recommendation vi.

49. *GRECO recommended that existing and yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by appropriate sanctions, which are effective, proportionate and dissuasive.*
50. It is recalled that, in the Compliance Report, reference had been made to a selection of articles from the draft Bill 2011 which established criminal sanctions for violations of political funding rules. GRECO had concluded that what had been reported presented some achievements but the introduction of a more systematic sanctioning regime, including administrative sanctions to be applied directly by the Electoral Commission for minor procedural violations, was needed. The recommendation had been considered partly implemented.
51. The authorities of Malta report that the new draft Bill 2013 establishes both administrative and criminal sanctions for violation of the political financing rules. The Electoral Commission will be able to directly impose administrative sanctions, such as “mere exposure and adverse comment”, as well as fines, for failure to comply with accounting rules (Article 24) and requirements established for statements of accounts, including cases of late submission (Article 32). Additional administrative and criminal sanctions for violation of accounting rules may be established as per proposal by the Minister of Justice (Article 24(3)). Criminal sanctions, such as fines and

imprisonment, are foreseen, for example, for a false declaration or failure to provide the required information to the treasurer of a party upon his/her request (Article 26), making a false statement to the Commission (Articles 33), recording an illegal donation (Article 39), false declaration by the treasurer in donation reports (Article 43), acceptance of an illegal donation (Article 44) and evading restrictions on donations (Article 45). Moreover, it will be possible for the Commission to institute proceedings before the First Hall Civil Court (Civil Proceedings) if the information required by an auditor or access to a party's books, documents or other records have not been provided by a political party (Article 29). The authorities report that further refinements of the draft Bill 2013 are underway.

52. GRECO is pleased with the progress made in order to render the sanctioning regime more systematic. In particular, flexible administrative penalties are foreseen alongside criminal sanctions, the Electoral Commission would be given powers to apply certain sanctions directly and legal obligations would be associated with concrete sanctions applicable to all persons/entities in respect of whom such obligations are established by law. At the same time, GRECO notes that the prevalence of criminal over administrative sanctions in the new bill is maintained. In both the Evaluation and Compliance Report (paragraphs 71 and 43, respectively), GRECO had pointed out that ordinary criminal sanctions may be cumbersome to apply in practice. Therefore, it might be beneficial for the authorities to consider seeking further balance between criminal and administrative penalties.
53. GRECO concludes that recommendation vi remains partly implemented.

III. CONCLUSIONS

54. **In view of the conclusions contained in the Third Round Compliance Report on Malta and in light of the analysis contained in the present report, GRECO concludes that Malta has implemented satisfactorily or dealt with in a satisfactory manner only two of the nine recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations ii and iii have been implemented satisfactorily and recommendation i remains partly implemented. With respect to Theme II – Transparency of Party Funding, all six recommendations remain partly implemented.
55. As regards incriminations, GRECO is pleased that amendments to the Criminal Code meet most of the concerns of the three recommendations issued in the Evaluation Report. The legal reform covers such issues as the criminalisation of bribery of domestic and foreign arbitrators and foreign jurors, an increase in the maximum penalty provided for the offence of trading in influence, and the introduction of more effective, proportionate and dissuasive penal sanctions for all bribery offences committed by judges. The only issue that remains pending is ratification by Malta of the Additional Protocol to the Criminal Law Convention on Corruption. GRECO uses this opportunity to once again urge the authorities to proceed with the ratification as soon as possible.
56. As for transparency of political funding, GRECO is deeply concerned that four years since the adoption of the Evaluation Report, a comprehensive legal framework for regulating political financing continues to be missing in Malta. It welcomes the priority attention accorded to the issue by the new Government and fully supports the development of a draft Bill 2013. While acknowledging the progress made in elaborating the new legislation, the authorities are nevertheless encouraged to pursue their efforts vigorously and to better align their draft legislation to the requirements of Recommendation Rec(2003)4. This can be done, in particular, by substantially reducing the threshold for disclosing donations provided to political parties,

introducing a ban on anonymous donations, developing additional rules on the presentation of annual statements of accounts by political parties to the Electoral Commission as well as their subsequent disclosure to the public, refining further the supervisory mandate of the Electoral Commission and considering the need to achieve further balance between criminal and administrative penalties provided for violation of the political funding rules.

57. In conclusion, Malta has not made any tangible progress in Theme II – Transparency of Party Funding as compared to the situation assessed in the First Compliance Report more than two years ago (and well over four years since the adoption of the Evaluation Report). More particularly, none of the six recommendations addressed to the country in the aforementioned area has been implemented satisfactorily or dealt with in a satisfactory manner. Under these circumstances, GRECO has no choice but to consider the situation as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the delegation of Malta to provide a report on the progress made in implementing recommendations i-vi (Theme II – Transparency of Party Funding), as soon as possible, however – at the latest – by 30 June 2014, pursuant to paragraph 2(i) of that Rule.
58. Finally, GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.